IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 20535 OF 2005

Date: 05.10.2005

BETWEEN:

M/s. Sri Venkateswara Swamy Vaddera Labour Contract Cooperative Society Ltd., rep. by its President, S. Venkata Swamy.

.... PETITIONER

And

The Commissioner,

Municipal Corporation of Hyderabad.

.... RESPONDENT

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 20535 OF 2005

ORDER:

Sri Venkateswara Swamy Vaddera Labour Contract Cooperative Society Limited ('the Society' for brevity) seeks a Writ of Mandamus declaring the action of the respondent, namely, the Commissioner Municipal Corporation of Hyderabad (MCH) in taking steps to allot 110 Civil and Sewer line works, and fixing the unit rates for the year 2005-2006 up to (-) 10% less instead of taking quoted rates, as illegal, arbitrary and violative of Articles 14, 19(1)(g) of the Constitution of India. The petitioner alleges that it is representing other similar Labour Contract Societies, and if the decision of the respondent in fixing the unit rates at (-) 10% less than the estimated rates is allowed to stay, all the Labour Contract Cooperative Societies would not be able to compete with well to do contractors. According to the petitioner when large number of contractors submitted their unit rates up to (+) 5% excess, it was improper and illegal for the respondent to have decided to approve the unit rates up to

(-) 10% less.

At the stage of admission itself the learned Standing Counsel for MCH was directed to produce necessary record and also to file counter affidavit. Accordingly, counter affidavit is filed by the Chief Engineer of MCH. It is stated that in fixing the unit rates up to (-) 10% less, the Corporation has accepted unit rates, which is more competitive and beneficial to the Corporation, by evaluating all the tenders received, and therefore, there is no arbitrariness. It is further stated that after fixing the unit rates the names of those contractors, who are willing to undertake the works, will be included in the list of contractors. The contractor for each work will be selected by drawal of lots in the list and once a contractor is selected, his name will be excluded for consideration for remaining works. Such contractor will get an opportunity again only after exhausting of the contractors included in the list. If a contractor is not willing to be included in the list of contractors prepared before conducting the lot, there is no compulsion on such contractor to undertake the work. All the works, the cost of which is below Rs.5,00,000/-, will be allotted under the said unit rate system to avoid the repetition of procedure in fixing the rates each and every time a contractor is selected. It is further stated that the Committee, consisting of Chief Engineer, Superintending Engineer, Additional Commissioner (Works), Additional Commissioner (Finance), Additional Commissioner (Administration) and Additional Commissioner (Legal) considered all the tenders received and recommended unit rate up to (-) 10% less.

Learned counsel for the petitioner Sri Kunareddy Anji Reddy made elaborate submissions reiterating the grounds urged in the writ affidavit. The learned Standing Counsel for MCH Sri Ganta Rama Rao repeated all the contentions. He also invites attention of this Court to Section 126 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') which enables the Commissioner to allot any works with an estimated cost of less than Rs.5,00,000/- to any contractor otherwise than tender process. The Municipal Corporation undertakes various civil and health works every year. These works run into thousands. So as to avoid repetition in determining the most competitive and responsive tender with reference to unit rates quoted, the MCH evolved the procedure for fixing unit rates for a given financial year. For the year 2005-2006, MCH issued tender notice on 30.4.2004 for fixing unit rates. 2051 contractors including the petitioner offered various rates. These tenders were referred to Tender Committee consisting of eight members under the Chairmanship of the Commissioner. The Tender Committee prepared a competitive statement for all 110 Civil and Sewer items and after examining the same recommended for approval of unit rates up to (-) 10% less. The rates approved were included in the annexures. The relevant portion of Minutes of the Tender Committee Meeting held on 21.7.2005 reads as under.

The abstract of the comparative statement for all the 110 items (Civil & Sewer items) quoted by the contractors in different ranges is as given below:

Sl.No.	Quoted percentage range	No. of contractorswho quoted(average ofcontractors for allitems)	Percentage ofContractors(Average forall items)	Remarks
1	Above (+)5% excess	846	41.25	Rejected as per G.O.Ms.No.133,Dt.20.11.2004 of I & CAD
2	Estimate rates & upto(+)5% excess	1001	48.85	
3	Below estimate rates and up to (-) 10% less	163	7.96	
4	(-) 10% & up to (-)15% less	18	0.87	
5	Upto (-) 15% less and above	23	1.08	

As seen from the above most of the contractors i.e., 48.85% have quoted in between estimated rates and excess up to (+) 5% excess. Contractors who have quoted below estimated rates and up to (-) 10% less is 7.96% and (-) 10% to (-) 15% less is 0.87% only. Hence keeping in view the trend of percentage quoted and taking into consideration the workability and for maintaining standard quality of work and completion of the work as per specifications, and also in view of these unit rates to be followed through out the year, Tender Committee which met on 21.7.2005 felt that the unit rates to be finalized for the year 2005-06 shall be fixed in a most suitable and workable manner.

Hence, the Tender Committee has opined that to achieve and maintain quality work and considering workable rates and keeping in view the trend of contractors who have quoted percentages for different ranges as above and after careful examination has recommended for approval as the Unit Rates for the year 2005-2006 for Civil and Sewer line works up to (-) 10% less as shown in the Annexure.

A look at the above would show that though majority of the contractors quoted unit rates up to (+) 5% excess (48.85%), the Committee took into consideration the workability and for maintaining standard quality of wok thought it fit, too higher amount or too less amount is not congenial. Accordingly, the Tender Committee decided to recommend unit rate up to (-) 10% less. The reason for this is to get maximum benefit for the Corporation, which has to manage the available finances. In such an event, the issue is ordinarily not justiciable especially when the Corporation decided the unit rates keeping in view the financial interest of the Corporation. It is well settled that getting maximum financial benefit to public authority sub-serves public interest. The submission that the contract works cannot be efficiently executed if the unit rates are up to (-) 10% less cannot be accepted especially when 7.96% of the contractors quoted such rates. In the result, this Court does not find any illegality or arbitrariness in the decision taken by the respondent.

The Writ Petition is accordingly, dismissed at the admission stage.

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(**V.V.S. RAO, J.)**

5th October, 2005

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